

UNITED STATES DISTRICT COURT  
Northern District of Texas  
Dallas Division

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

FILED

OCT 29 2012

CLERK, U.S. DISTRICT COURT  
By *[Signature]*  
Deputy

United States of America  
vs.

Docket No. 3:09-CR-210-B

Jesse William McGraw  
Defendant

MOTION FOR RETURN OF SEIZED PROPERTY  
AND SUPPRESSION OF EVIDENCE

I

Relief Sought

Jesse McGraw, Pro Se defendant in custody at Seagoville FCI respectfully moves this court for an order that certain property seized from him be returned to him and that his property be suppressed as evidence against him in the proceeding captioned above and in any further criminal proceeding that might be brought - "if" it hasn't already been done so presently.

II

Grounds for Relief

Jesse McGraw asserts that he is the owner of the property that is listed in the schedule attached to and incorporated in this motion as Exhibit A. This property was seized from the defendant on June 26, 2009, between the hours of 11:00 pm - 12:00 am, at the premises known as 2801 Trinity Oaks Dr. #328, Arlington, Tx 76001 and 9301 N. Central Expressway in Dallas, known as the Carroll Clinic, in which property was seized from the defendant's vehicle. These seizures took place in the Northern District of Texas.

Pursuant to the exclusionary rule adopted by the courts of the United States to protect the Fourth Amendment rights of the defendant and persons similarly situated, the defendant is entitled to have the property listed in the attached Schedule suppressed as evidence against him according to the procedures set out in Rules 12(b)(3)(C) and 41(f) of the Federal Rules of Criminal Procedure. Furthermore, because the defendant is entitled to lawful possession of the property listed in the Schedule, and because the government has no legitimate need for this property ~~once its use as evidence against the defendant is suppressed, the~~ property should be returned to the defendant according to the procedures specified in Rule 41(g) of the Federal Rules of Criminal Procedure.

In addition, any such items, devices and electronic storage devices including, but not limited to: hard drives, CD-ROM discs, SIM cards and/or USB storage devices; if possess evidentiary value, can and should be mirror ~~image~~ imaged (copied) so that the seized property can be returned.

### III

#### Special Request

Because Jesse McGraw is presently incarcerated, he pleads to this Honorable Court to return seized property to his wife, Beatriz Vanessa McGraw at the following address: 209 Pebblebrook Street Arlington, TX 76014 (972) 916-1571. Many of the seized property listed in the attached Schedule have a monetary value, which have economic benefits by liquidation, which would greatly improve the McGraw family's financial strains - Restitution, debts, day care for their 4 year old daughter, living expenses and Beatriz' medical needs.

IV

Supporting Case Law

Courts have recognized that once the government no longer has a need to use evidence, it should be returned. Prior to the amendment, [former] Rule 41(e) [now see Fed. R. Crim. P. 41(g)] did not explicitly recognize a right of a property owner to obtain return of unlawfully seized property even though the government might be able to protect its legitimate law enforcement interests in the property despite its return. As amended, [former] Rule 41(e) [now see Fed. R. Crim. P. 41(g)] provides that an aggrieved person may seek return of property that has been unlawfully seized, and a person whose property that has been lawfully seized may seek return of property. When aggrieved by the government's continued possession of it, [R]easonableness under all of the circumstances just be the test when a person seeks the return of property. If the United States' legitimate interests can be satisfied even if the property is returned, continued retention of the property would become unreasonable.

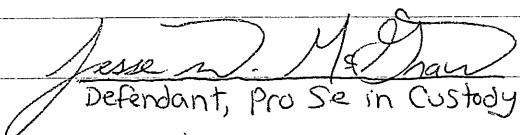
<sup>2</sup> In the event that copies have been made of any documents, those copies must be returned with the originals. Wallace & Tiernan Co., *supra*; see Richey v. Smith, 136 F. Supp. 572, 574 (E.D. Texas 1977); Moore, *supra*.

<sup>3</sup> A motion filed pursuant to [former] Rule 41(e) [now see Fed. R. Crim. P. 41(g)], and directed to the Court which considered the original criminal case, is the proper avenue for relief in these circumstances. The rule expressly provides:

A person aggrieved by the deprivation of property may move for the property's return. If [the district court] grants the motion, the Court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

The Advisory Committee Note to the 1989 amendment (the amendment that added this revision to the rule) expressly adopts the authority previously cited and makes it clear that, once the criminal proceedings are concluded, the government has no reasonable claim on property seized in connection with those proceedings: (please note bullet point<sup>1</sup> on previous page: "3".)

Respectfully Submitted to the  
Clerk of the Court on Oct. 24, 2012

  
Defendant, pro Se in Custody

Jesse William McGraw

Reg# 38690 - 177

Seagoville FCI

P.O. Box 9000

Seagoville, TX 75159-9000

## Schedule: Exhibit A

blue notebook containing ECPA print out

grey hoodie

6 DVD's 3 blank - Night of the living dead, remix music video, Pirates of the Caribbean  
Cellular Telephone Jammer

lock pick kit

Security Officer gold badge

Clip board with 4 pages

Social Security card for Jesse William McGraw

Dell Latitude Laptop #1PRQGCI

1 Iron Horse CD-R

Compaq ~~laptop~~ Desktop #CNH54Y0JQZ

Yellow hand held GPS

CD-R Enter the Matrix - patch for PC game

1 3 ring binder black

1 3 ring binder with ETA

1 Sun glasses

1 Online Business Guide

1 AT&T Modem

1 2 GB Memory stick w/ saved files from games

1 5 SIM cards - 1 16 MB multimedia card

1 black fold up keyboard

2 binoculars

3 green notebook "The Black Friday Null"

1 Manila folder w/ Isaac Guest (6 pages), Gmail (11 pages), 3/15/09 death threats chat logs

5 User manual for portable mobile Signal Jammer

6 CD-R file back ups 3/13/09 encrypted files

1 Blue body Armor

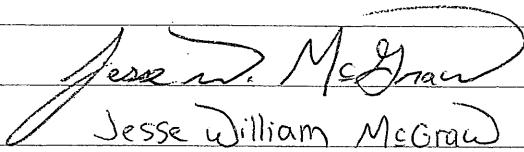
1 Drivers Liscence for Jesse William McGraw

1 Sony Playstation PSP with 4 gb memory stick

Exhibit A continued...

- 0 Sony Laptop #28312230-3517531
- 1 Microscope set
- 2 Red Wallet
- 3 4 gb memory stick/card - Left 4 Dead game files
- 1 AT&T Cellphone HTC Tilt (slide out)
- 5 Motorola Silver Razr flip phone
- 7 Yellow notebook
- 1 Security Plus book
- 3 Red book Security Study Guide
- 1 Pen w/ USB thumb drive
- 0 Travel power car adapter

\* This concludes the Schedule: Exhibit A.

  
Jesse W. McGraw

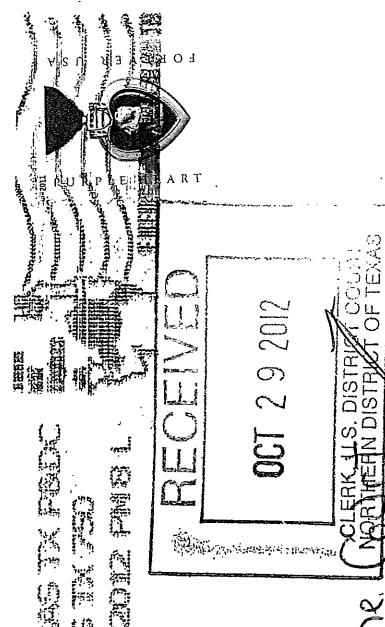
Jesse William McGraw

Reg # 38690-177

Seagoville, FCI

P.O. Box 9000

Seagoville, TX 75159-9000



Name Jesse W. McGran  
Reg. No. 38690-177  
FEDERAL CORRECTIONAL INSTITUTION  
P.O. Box 9000  
Seagoville, TX 75159-9000

Clerk of the [redacted]  
1100 Commerce St.  
Dallas, TX 75242

10-24-12-Wed

75242-31052